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U.S. Citizenship
and Immigration
Services

23

JAN 27 2016

FILE:

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Applicant:

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, California Service Center, is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, counsel asserts that the applicant only learned he had been granted temporary resident status by the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) after the expiration of the forty-three month application period.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Immigration and Nationality Act (INA) may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on August 5, 1993. The 43-month eligibility period for filing for adjustment expired on March 5, 1997. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on February 26, 1999. The director therefore denied the untimely Form I-698 application, and subsequently terminated the applicant's temporary resident status.

Counsel asserts that the applicant was not given notice of the approval of his temporary resident application prior to the expiration of the forty-three month period to submit his adjustment application. While the record contains a notice from the Service's Vermont Service Center dated June 4, 1997, that erroneously informed the applicant that he was still eligible to file the Form I-698 adjustment application, neither counsel nor the applicant has submitted any evidence to corroborate the assertion that the Service had not previously notified him that he had been granted temporary residence. A review of Service procedures reveals that upon approval of an application for temporary residence status and a corresponding entry of such information in Service computer records, a computer-generated notice of approval was issued within forty-eight hours and mailed to the applicant at his last known address of record. In this particular case, the record does not contain an approval notice that had been mailed to the applicant and subsequently returned by the United States Postal Service as either unclaimed or undeliverable.

The Service and private voluntary organizations widely publicized the procedures of the amnesty program, including the necessity of applying for permanent residence. If the applicant required assistance in pursuing his application, such assistance was widely available with inquiries to the Service, from private nonprofit Qualified Designated Entities, and from private legal assistance resources. Furthermore, the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to duly file the I-698 application in a timely manner remains with the applicant. 8 C.F.R. § 245a.3(d).

The statements on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.